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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

DAVID DARYL JONES,

Plaintiff and Appellant,

v.

GEORGE SANTOS,

Defendant and Respondent.

F076293

(Super. Ct. No. BCV-15-100849)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Kern County. David R. Lampe, Judge.

David Daryl Jones, in pro. per., for Plaintiff and Appellant.

Mark L. Nations, County Counsel, and Phillip T. Jenkins, Deputy County Counsel, for Defendant and Respondent.

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Appellant, David Daryl Jones, filed a complaint against defendants George Santos, a Kern County Sheriff's deputy, and Jose Ceja, a tow truck driver, alleging causes of action for malicious prosecution, false arrest, and defamation.<sup>1</sup> The trial court sustained a

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\* Before Smith, Acting P.J., Snauffer, J. and DeSantos, J.

<sup>1</sup> Defendant Ceja is not a party to this appeal.

demurrer to Jones's cause of action for malicious prosecution and granted Santos's motion for summary judgment, finding that no triable issues of fact exist to support the causes of action for false arrest and defamation. In granting the summary judgment motion, the court found Santos was immune from liability for his alleged conduct in effectuating Jones's arrest and that the statements in Santos's police report relating to a criminal investigation were privileged.

On appeal, Jones has not provided an adequate record to allow for review of alleged errors by the trial court, providing only copies of the trial court docket and the order granting Santos's motion for summary judgment. Moreover, despite disagreeing with the trial court's factual and legal conclusions, Jones fails to present any legal arguments as to why the order was erroneous, instead making conclusory claims that the decision was based on corruption of defense counsel and the trial court. Jones having provided no evidence or credible legal arguments that the summary judgment was improperly granted, we affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND<sup>2</sup>**

On August 25, 2015, Santos and his partner, Deputy Arthur Gonzales, responded to a motel parking lot to investigate a battery complaint. When the deputies arrived at the motel, Ceja told them Jones had attacked him while he was attempting to repossess Jones's wife's car. Ceja showed the deputies video footage of the incident and requested that Jones be placed under citizen's arrest for the attack. While the deputies were at the scene, Jones and his wife made several calls to 911 attempting to speak with Santos's supervisor. A 911 dispatcher called Santos to inform him that Jones and his wife had repeatedly been calling 911. At Ceja's direction, Santos arrested Jones for battery and

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<sup>2</sup> The following facts are based on the information contained in the trial court's order granting the motion for summary judgment.

separately for making harassing calls to 911. A criminal case was filed against Jones but ultimately was dismissed.

Jones filed this action alleging malicious prosecution, false arrest, and defamation. In his operative complaint, Jones claimed that Santos made defamatory statements at the time of arrest, including that Jones was “a broke criminal,” a “drug hype,” and a “nut.” With respect to the first cause of action for malicious prosecution, the court sustained a demurrer without leave to amend. Santos then filed a summary judgment motion challenging the two remaining causes of action. The court granted the motion. In doing so, it noted that Jones did not submit a separate statement of facts disputing the facts as asserted by Santos. The trial court deemed admitted the facts as submitted by Santos and found he had carried his burden of proof against the allegations of false arrest and defamation. The court determined that, at all relevant times, Deputies Santos and Gonzales were acting in the course and scope of their employment with the Kern County Sheriff’s Office and any statements made at the time of Jones’s arrest or during the investigation were made for the purpose of investigating the criminal charges.

The court found there were no triable issues of fact with respect to the second cause of action for false arrest because Santos was immune from liability under Penal Code sections 837 and 847 for placing Jones under citizen’s arrest for battery. Santos had a reasonable belief that Jones’s arrest was lawful based on Santos’s understanding that Jones was making harassing 911 calls. As to third cause of action for defamation, the trial court found there were no triable issues of fact because Santos’s statements were privileged under Government Code section 821.6 and Civil Code section 47(b) and Jones had not pled or proven any special damages. Accordingly, the court granted the motion for summary judgment and entered judgment in favor of Santos.

## DISCUSSION

### I. Standard of Review

An order granting summary judgment is reviewed de novo. (*Biancalana v. T.D. Service Co.* (2013) 56 Cal.4th 807, 813 (*Biancalana*).) As a practical matter, “ ‘we assume the role of a trial court and apply the same rules and standards which govern a trial court’s determination of a motion for summary judgment.’ ” (*Simmons v. Superior Court* (2016) 7 Cal.App.5th 1113, 1124.) A motion for summary judgment is properly granted “if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” (Code Civ. Proc., § 437c, subd. (c);<sup>3</sup> *Biancalana, supra*, 56 Cal.4th at p. 813.) “From commencement to conclusion, the party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law.” (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850 (*Aguilar*); *GoTek Energy, Inc. v. SoCal IP Law Group, LLP* (2016) 3 Cal.App.5th 1240, 1245.)

A defendant moving for summary judgment must show that one or more elements of the plaintiff’s cause of action cannot be established or show there is a complete defense to the plaintiff’s cause of action. (§ 437c, subd. (p)(2); *Aguilar, supra*, 25 Cal.4th at p. 849.) Once the defendant meets this burden, the burden of production shifts to the plaintiff to show that a triable issue of one or more material facts exists as to the defense. (§ 437c, subd. (p)(2); *Aguilar, supra*, at p. 850 [“A burden of production entails only the presentation of ‘evidence’ ”].) “The plaintiff ... shall not rely upon the allegations ... of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to [that] cause of action ....” (§ 437c, subd. (p)(2).)

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<sup>3</sup> Undesignated statutory references are to the Code of Civil Procedure.

In conducting our review, we must identify the issues to be considered on the motion for summary judgment, which are defined by the pleadings. (*Conroy v. Regents of University of California* (2009) 45 Cal.4th 1244, 1250.) As to each claim as framed by the complaint, “ ‘the motion must respond by establishing a complete defense or otherwise showing there is no factual basis for relief on any theory reasonably contemplated by the opponent’s pleading.’ ” (*Eriksson v. Nunnink* (2011) 191 Cal.App.4th 826, 848.) We conduct an independent review of the record, considering all of the evidence set forth in the moving and opposition papers, except evidence to which objections were made and sustained by the trial court, and all inferences reasonably drawn from the evidence. (§ 437c, subd. (c).) We view the evidence in the light most favorable to the party opposing summary judgment, liberally construing the opposing party’s submissions and resolving all doubts concerning the evidence in favor of the opposing party. (*Aguilar, supra*, 25 Cal.4th at p. 856.) “We must affirm a summary judgment if it is correct on any of the grounds asserted in the trial court, regardless of the trial court’s stated reasons.” (*Grebing v. 24 Hour Fitness USA, Inc.* (2015) 234 Cal.App.4th 631, 637.)

## **II. Discussion**

Here, Jones has failed to provide an adequate record on appeal to make review of the summary judgment order possible.<sup>4</sup> As stated, Jones provided only a copy of the order granting summary judgment and a copy of the trial court’s docket. The most fundamental rule of appellate review is that an appealed judgment or order is presumed to be correct and “ ‘[a]ll intendments and presumptions are indulged to support it on matters as to which the record is silent.’ ” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 (*Denham*)). “[A] trial court’s judgment is presumed correct, and so ordinarily will not be

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<sup>4</sup> It does not appear that Jones challenges the dismissal of the first cause of action by way of demurrer. In any event, he failed to provide an adequate record relating to the demurrer to allow for appellate review.

set aside on appeal absent an affirmative showing of reversible error.” (*Samara v. Matar* (2018) 5 Cal.5th 322, 335 (*Samara*); *Denham*, at p. 564 [“ ‘[E]rror must be affirmatively shown.’ ”].)

It is the appellant’s responsibility to include in the appellate record the portions of the record relevant to the appellant’s issues on appeal. (*In re Valerie A.* (2007) 152 Cal.App.4th 987, 1002-1003; *Bianco v. California Highway Patrol* (1994) 24 Cal.App.4th 1113, 1125.) Failure to provide an adequate record on an issue requires the appellate court to resolve the issue against the appellant. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295 (*Maria P.*); *Oliveira v. Kiesler* (2012) 206 Cal.App.4th 1349, 1362 [judgment must be affirmed where appellant failed to present adequate record for review].)

Jones failed to provide this court with copies of his complaint or the moving papers and exhibits associated with the motion for summary judgment. Without a copy of the complaint, we do not know the facts asserted in support of each cause of action. Likewise, without copies of the moving papers and supporting exhibits, we do not know what evidence the trial court relied upon in granting the motion for summary judgment.

#### **A. Disagreement with the Factual Findings of the Trial Court**

Based on the recitation of the facts contained in his appeal, Jones disagrees with the determination of the undisputed facts the trial court made when ruling on the motion for summary judgment. Jones presents an alternative version of the events that occurred. He asserts Ceja’s repossession of the vehicle was illegal. When Jones and his family confronted Ceja, Ceja started swinging a metal ratchet at them. Ceja then sprayed mace at Jones, but missed and sprayed Jones’s wife instead. Jones contends the deputies called paramedics to assist Jones’s wife, and the paramedics confirmed she had been sprayed with mace. He also contends Santos refused to investigate whether Ceja had attacked Jones and his family or if Ceja had the right to repossess the car.

Without the relevant records, we cannot adequately review the trial court's factual determinations. To the extent we are hampered in our ability to review the trial court's factual findings because Jones failed to provide an adequate record on appeal, those issues must be resolved against him.

Neither party can rely on the allegations of his or her own pleadings to make an evidentiary showing in support of or in opposition to a motion for summary judgment. (*College Hospital Inc. v. Superior Court* (1994) 8 Cal.4th 704, 720, fn. 7; *Gutierrez v. Girardi* (2011) 194 Cal.App.4th 925, 933.) An opposition to a motion for summary judgment, "where appropriate, shall consist of affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken." (§ 437c, subd. (b)(2).) Further, the opposition papers "shall include a separate statement that responds to each of the material facts contended by the moving party" and "shall be followed by a reference to the supporting evidence." (*Id.*, subd. (b)(3).) "Failure to comply with this requirement of a separate statement may constitute a sufficient ground, in the court's discretion, for granting the motion." (*Ibid.*)

The requirement of a separate statement from the moving party and a responding statement from the party opposing summary judgment serves two functions: "to give the parties notice of the material facts at issue in the motion and to permit the trial court to focus on whether those facts are truly undisputed." (*Parkview Villas Assn., Inc. v. State Farm Fire & Casualty Co.* (2005) 133 Cal.App.4th 1197, 1210.) "Separate statements are required not to satisfy a sadistic urge to torment lawyers, but rather to afford due process to opposing parties and to permit trial courts to expeditiously review complex motions for ... summary judgment to determine quickly and efficiently whether material facts are disputed." (*United Community Church v. Garcin* (1991) 231 Cal.App.3d 327, 335.)

In order to challenge the factual contentions raised by Santos in the motion for summary judgment, Jones was required to provide a separate statement of facts

referencing supporting evidence. (§ 437c, subd. (b)(3).) He failed to do so, and moreover he failed to provide an adequate record on appeal to allow for review. (*Maria P.*, *supra*, 43 Cal.3d at p. 1295.) Jones failed to affirmatively show that the trial court's factual determinations were made in error and, we therefore must resolve those issues in favor of respondent. (*Ibid.*; *Samara*, *supra*, 5 Cal.5th at p. 335.)

## **B. Legal Arguments Raised on Appeal**

We next turn to the legal arguments raised on appeal. Jones generally challenges the order granting summary judgment but fails to present coherent legal arguments describing how the court erred in its ruling. Jones alleges that the summary judgment motion was granted “on the false and colluded understanding between the two Superior Court judges,” but provides no further detail regarding any alleged wrongdoing. He asserts that the original judge assigned to the case went on vacation for over two months and turned his duties over to another judge who then granted the motion for summary judgment. He also contends the court ignored his complaints of improper actions by Kern County Counsel that he lodged with the court, the California State Bar, and the Department of Justice. He further argues that Santos did not negate any of the elements of the causes of action for false arrest and defamation.

Jones fails to present any legal authority in support of his claims that there was prosecutorial or judicial wrongdoing. “Appellate briefs must provide argument and legal authority for the positions taken. ‘When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived.’ ” (*Nelson v. Avondale Homeowners Assn.* (2009) 172 Cal.App.4th 857, 862; *In re A.C.* (2017) 13 Cal.App.5th 661, 672.) “We are not bound to develop appellants’ arguments for them. [Citation.] The absence of cogent legal argument or citation to authority allows this court to treat the contention as waived.” (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956.) As Jones’s contentions are not supported



by reasoned argument or legal authority, we shall deem them waived.<sup>5</sup> However, we will conduct a de novo review of the legal grounds provided by the trial court in granting the summary judgment motion.

The trial court found there were no triable issues of fact and that Santos was immune from liability for false arrest based on Penal Code sections 837 and 847. Penal Code section 837 provides that private persons may conduct a citizen's arrest. (Pen. Code, § 837.) Further, Penal Code section 847 states that there "shall be no civil liability on the part of, and no cause of action shall arise against, any peace officer [] acting within the scope of his or her authority, for false arrest or false imprisonment arising out of any arrest" where "at the time of the arrest, [the officer] had reasonable cause to believe the arrest was lawful" or if the arrest was based on a citizen's arrest under section 837. (Pen. Code, § 847.) The policy rationale for Penal Code section 847 is "that peace officers should have protection from civil liability for arrests made upon reasonable mistake." (*Cornell v. City & County of San Francisco* (2017) 17 Cal.App.5th 766, 789.) As Jones is unable to challenge the trial court's factual findings that Santos had reasonable cause to arrest him, the grant of immunity from claims of false arrest was proper.

As to Jones's third cause of action, the trial court found there were no triable issues of fact to prove defamation against Santos because Santos's statements were privileged and Jones neither pled nor proved any special damages. Both of the legal grounds raised by the trial court are sound. "Special damages must be specially pled in a defamation case." (*Pridonoff v. Balokovich* (1951) 36 Cal.2d 788, 792; *Anschutz Entertainment Group, Inc. v. Snepp* (2009) 171 Cal.App.4th 598, 643.) To the extent

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<sup>5</sup> While we are sympathetic to the challenges facing Jones representing himself on appeal, that does not diminish his burden to establish error. The law permits a party to act as his own attorney, however, " '[s]uch a party is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys.' " (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.)

Jones failed to allege special damages, he failed to meet an element of the defamation cause of action. Furthermore, Government Code section 821.6 immunity applies to both prosecutors and police officers. (*Randle v. City and County of San Francisco* (1986) 186 Cal.App.3d 449, 456-457.) “State officers and employees are encouraged to investigate and prosecute matters within their purview without fear of reprisal from the person or entity harmed thereby. Protection is provided even when official action is taken maliciously and without probable cause.” (*Shoemaker v. Myers* (1992) 2 Cal.App.4th 1407, 1424.) Having found Santos had the reasonable belief that arresting Jones was proper based on his observations of Jones’s conduct and based on Ceja’s right to make a citizen’s arrest, governmental immunity applied. Jones failed to show there are triable issues as to any material fact or that Santos was not entitled to a judgment as a matter of law. (§ 437c, subd. (c); *Biancalana, supra*, 56 Cal.4th at p. 813.)

#### **DISPOSITION**

The judgment is affirmed. Respondent is entitled to his costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).)